

HOUSE BILL NO. 453

INTRODUCED BY B. WISEMAN

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CITIZEN DATA PROTECTION ACT TO PROVIDE PRIVACY PROTECTION FOR ELECTRONIC DATA AND INFORMATION; DEFINING TERMS; PROVIDING CONFIDENTIALITY REQUIREMENTS FOR PROVIDERS OF INTERNET SERVICE; AND REQUIRING ENFORCEMENT BY THE DEPARTMENT OF JUSTICE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 6] may be cited as the "Citizen Data Protection Act".

(2) The legislature finds that the right of privacy provided under Article II, section 10, of the Montana constitution must keep pace with the rapid changes in technology.

(3) The legislature also finds that:

(a) the 10th amendment to the U.S. constitution provides that powers not delegated to the federal government by the U.S. constitution are reserved to the states or to the people; and

(b) more restrictive rights of privacy may be reserved to the state under the Montana constitution than are provided in federal law.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Access" means to intercept or retrieve data from, communicate with, store data in, or otherwise make use of any resources of a computer, system, or network.

(2) "Computer" has the meaning provided in 45-2-101.

(3) "Data" means the representation in any form of information, knowledge, facts, concepts, or instructions that are being prepared, have been formally prepared and are intended to be processed, are being processed, or have been processed in a computer, system, or network.

(4) (a) "Information service" means a service that is designed to or has the capability to generate, process, store, retrieve, convey, emit, transmit, receive, relay, record, or reproduce any data, information, image,



1 software program, signal, or sound by means of any component, device, equipment, system, or network, including
2 but not limited to:

3 (i) a computer, computer system, computer network, modem, or scanner;

4 (ii) a telephone, cellular phone, satellite phone, pager, personal communications device, or facsimile
5 machine;

6 (iii) any type of transmitter or receiver; or

7 (iv) any other component, device, equipment, system, or network that uses analog, digital, electronic,
8 electromagnetic, magnetic, or optical technology.

9 (b) The term does not include a television company using a community antenna system.

10 (5) "Internet" has the meaning provided in 2-17-551.

11 (6) "Network" means a set of related, remotely connected devices and facilities, including more than one
12 system, with the capability to transmit data among any of the devices and facilities. The term includes but is not
13 limited to a local, regional, or global computer network.

14 (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability
15 company.

16 (8) (a) "Provider of internet service" means a person who provides users with authenticated access to
17 or presence on the internet by means of a switched or dedicated communications channel upon which the
18 provider provides transit routing of internet protocol packets for and on behalf of the user.

19 (b) Unless otherwise stated, the term does not include the offering, on a common carrier basis, of
20 telecommunications as defined by 47 U.S.C. 153.

21 (9) "Response costs" means any reasonable costs that arise in response to and as a proximate result
22 of a crime described in [sections 1 through 6]. The term includes but is not limited to any reasonable costs to:

23 (a) investigate the facts surrounding the crime;

24 (b) ascertain or calculate any past or future loss, injury, or other damage;

25 (c) remedy, mitigate, or prevent any past or future loss, injury, or other damage;

26 (d) test, examine, restore, or verify the integrity of or the normal operation or use of any internet or
27 network site, electronic mail address, computer, system, network, component, device, equipment, data,
28 information, image, software program, signal, or sound.

29 (10) "Software program" means an ordered set of data representing coded instructions or statements that
30 can be executed by a computer and cause the computer to perform one or more tasks.

1 (11) "Subscriber" means a person who establishes an account with a provider of internet service, whether
2 or not on a fee basis.

3 (12) "System" means a set of related equipment, whether or not connected, that is used with or for a
4 computer.

5 (13) "User" means an individual who uses the services offered by the provider of an internet service.
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7 **NEW SECTION. Section 3. Disclosure to government agencies.** The disclosure to a governmental
8 agency of any data, information, image, software program, signal, or sound contained in any computer, system,
9 or network or access to a computer, system, network, telecommunications device, telecommunications service,
10 or information service is allowed upon:

11 (1) presentation of:

12 (a) a subpoena under 46-4-301;

13 (b) a search warrant or other order issued by a court of competent jurisdiction to the governmental
14 agency and obtained using the procedures described in 46-5-220 through 46-5-228 or by demonstrating that the
15 merits of public disclosure clearly exceed the demand for individual privacy; or

16 (c) appropriate authority provided by the federal rules of criminal procedure or the stored wire and
17 electronic communications and transactional records access provisions of 18 U.S.C. 2701, et seq.; or

18 (2) compliance with the terms and conditions that may be required under 5 U.S.C. 552a, 12 U.S.C. 1953,
19 et seq., 12 U.S.C. 3412, et seq., 15 U.S.C. 1681, et seq., 18 U.S.C. 2510, et seq., 20 U.S.C. 1232g, 42 U.S.C.
20 3796h, 47 U.S.C. 551, et seq., 50 U.S.C. 401, et seq., 50 U.S.C. 1801, et seq.
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22 **NEW SECTION. Section 4. Provider of internet service -- information requirements -- notice --**
23 **unintentional disclosure -- penalties.** (1) (a) A provider of internet service shall keep confidential all
24 information concerning a user unless the subscriber gives permission, in writing or by electronic mail, to the
25 provider of internet service to disclose the information.

26 (b) An electronic mail message from a subscriber giving permission to disclose information relating to
27 any user of that subscriber's account:

28 (i) may not be generated by the provider of internet service;

29 (ii) may not be required as a term of service by the provider of internet service; and

30 (iii) must provide a specific, clear statement from the subscriber acknowledging that the provider of

1 internet service may disclose the user's information.

2 (2) A provider of internet service shall provide notice of the requirements of subsection (1) to each of its
3 subscribers.

4 (3) Except as provided in [section 3] or as otherwise provided by federal or state law, a provider of
5 internet service may not disclose to unauthorized third parties for sale, marketing, or any other purpose
6 information regarding a user's interactions with the provider of internet service, including but not limited to:

7 (a) uniform resource locators accessed or retrieved by a user, including websites;

8 (b) all electronic mail sent and received by a user;

9 (c) all files downloaded or uploaded by a user; and

10 (d) all data accessed by or provided by a user or subscriber.

11 (4) A provider of internet service may review user data described in subsection (3) as required by federal
12 law but may not disclose the data to unauthorized third parties for sale, marketing, or any purpose not required
13 by federal law.

14 (5) A provider of internet service may not be held liable for a third party's illegal acquisition of data under
15 this section unless the provider of internet service did not take reasonable steps to maintain the security and
16 privacy of the data.

17 (6) A provider of internet service who is convicted of knowingly violating any provision of this section is
18 guilty of a misdemeanor and shall be punished as provided in 46-18-212.

19 (7) For the purposes of this section, "provider of internet service" is a person who provides to a
20 subscriber or a user, with or without a fee, access to the internet or the electronic mail address of the subscriber
21 or user and may include a telecommunications provider.

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23 **NEW SECTION. Section 5. Victim's right of civil action.** (1) Any victim of a crime described in
24 [sections 1 through 6] may bring a civil action to recover:

25 (a) damages for any response costs, loss, or injury suffered as a result of the crime;

26 (b) punitive damages; and

27 (c) costs and reasonable attorney fees incurred in bringing the civil action.

28 (2) A victim of a crime described in [sections 1 through 6] may bring a civil action pursuant to this section
29 whether or not the person who committed the crime is or has been charged with or convicted or acquitted of the
30 crime or any other offense arising out of the facts surrounding the crime.

